



WISCONSIN SUPREME COURT

Monday, April 26, 2004

9:45 a.m.

03-0098

Tatum Smaxwell, et al. v. Melva Bayard, et al

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a ruling of the Manitowoc County Circuit Court, Judge Patrick L. Willis presiding.

In this case, the Wisconsin Supreme Court will decide whether property owners may be held liable if a dog that they do not own, but that is on their property with their permission, bites someone.

Here is the background: In June 1999, when she was 3 years old, Tatum Smaxwell was mauled by three 75-pound wolf-hybrid dogs on her grandmother's property. Tatum was living in a converted former motel on the property with her mother and two siblings. The dog owner, Melva Bayard, rented another one of the motel units and kept her dogs out back with permission from Tatum's grandmother, Gloria Thompson. On the day Tatum was injured, Bayard had forgotten to latch the kennel.

For about seven years before this incident, neighbors complained regularly about the dogs. The Manitowoc County Sheriff's Department reported more than 70 complaints about the animals running loose and some individuals expressed fear because the dogs looked like wolves and were killing birds. In 1992, one of the dogs bit a sheriff's deputy, and in 1999, Bayard acknowledged that her adult dogs had killed some of her puppies. Trial court testimony indicated that the grandmother was aware of the complaints.

In July 2001, the Smaxwells sued Bayard, Thompson, and Thompson's insurer, Heritage Mutual. They also sued Manitowoc County, alleging that the county knew the dogs were dangerous and should have ordered them removed from the property. Bayard did not respond to the court papers, and has not appeared in this case. Thompson denied that she was liable and, in March 2002, the circuit court agreed, dismissing the claims against all of the defendants.

The Smaxwells went to the Court of Appeals, which affirmed the circuit court, noting that Wisconsin appellate courts have consistently declined to hold property owners liable when someone else's dog bites someone on their land.¹

Now, the family has come to the Supreme Court, arguing that the courts, in certain cases, have taken a more expansive view of property owners' duties to the people who use their property.² The family argues that dogs and other animals – regardless of who owns them – can constitute a dangerous condition or defect on the property and that, therefore, a landlord should be held liable just as s/he would be any other unsafe condition.

The Supreme Court will decide if the Smaxwells may pursue their claim against Tatum's grandmother and her insurer.

¹ Gonzales v. Wilkinson, 68 Wis. 2d 154, 227 N.W.2d 907 (1975); Malone v. Fons, 217 Wis. 2d 746, 580 N.W.2d 697 (Ct. App. 1998)

² Pagelsdorf v. Safeco Insurance Co. of America, 91 Wis. 2d 734, 284 N.W.2d 55 (1979); Patterman v. Patterman, 496 N.W.2d 613 (Ct. App. 1992)